



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO TYSON FOODS INCORPORATED Permit No. VA0004031

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Tyson, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Tyson" means Tyson Foods, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. “Facility” means the Tyson Foods Wastewater Treatment Plant located in Glen Allen, Virginia.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means VPDES Permit No. VA0004031, which became effective November 14, 2005, and expires November 13, 2010.
10. “O&M” means operations and maintenance.

SECTION C: Findings of Fact and Conclusions of Law

1. Tyson owns and operates the Glen Allen Facility in Hanover County, Virginia. This Facility is the subject of VPDES Permit No. VA0004031, which allows Tyson to discharge treated wastewater into a tributary of the Chickahominy River in strict compliance with terms, limitations and requirements outlined in the Permit.
2. On August 2, 2005, Department personnel observed a fish kill at stream station 2-XDD000.40 which is located approximately 0.5 miles downstream of Tyson’s discharge. One hundred dead fish were observed, 90 largemouth bass and 10 sunfish. Photographs and field measurements taken on August 2nd indicate that an excessive algae bloom robbed the stream of oxygen causing the fish kill.
3. On August 19, 2005, Tyson reported a failure of the dissolved air flotation (DAF) unit. Tyson staff was unable to repair the unit until August 22, 2005. On August, 23, 2005, Department personnel observed a fish kill at stream station 2-XDD000.84 which is located approximately 0.3 miles downstream of Tyson’s discharge. A DO reading of 0.7 mg/L was recorded at this station. On August 24th personnel walked the stream bank from station 2-XDD000.84 to the Tyson discharge and counted 65 dead Lepomis. Photographs and field measurements taken at station 2-XDD000.84 indicate that the fish died as a result of ammonia toxicity.
4. On August 25, 2005, Tyson reported a sand-filter pump failure which could not be repaired immediately. The sand-filter was bypassed from August 28th through the 30th, resulting in effluent violations.
5. On September 10th Tyson reported effluent violations of BOD (max concentration), TSS (max and average concentration), total phosphorous (max and average concentration) and ammonia nitrogen (average quantity and concentration) on the August 2005 DMR.
6. On October 17th the Department received Tyson’s September DMR which was due on October 10th, 2005.

7. On November 2, 2005, the Department issued an NOV to Tyson citing it for the two fish kills, the effluent violations, and the late DMR.
8. The Department met with Tyson on December 12, 2005, to discuss the NOV and ammonia water quality concerns in the Facility's receiving stream. Tyson took responsibility for the fish kills and the ammonia water quality standard concerns and expressed a desire to move forward to repair the DAF and comply with its Permit. Tyson outlined its plan during the meeting and portions of the plan with a schedule are incorporated into this Order's appendix.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Tyson, and Tyson agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Tyson, and Tyson voluntarily agrees, to pay a civil charge of \$25,700 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for Tyson. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Tyson, for good cause shown by Tyson, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Tyson by DEQ on November 2, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. In the interest of resolving this matter without delay and expense of litigation Tyson agrees to the entrance of this Consent Order, and admits the jurisdictional

allegations of the Order but neither admits nor denies the Findings of Fact or the Conclusions of Law herein.

4. Tyson consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Tyson acknowledges that it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Tyson to comply with this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Tyson shall be responsible for failure to comply with this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Tyson shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Tyson shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 5 business days of learning of any condition above, which Tyson intends to assert will result in the impossibility

of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Tyson. Notwithstanding the foregoing, Tyson agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Tyson petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to Tyson.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Tyson from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Tyson voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of March 16, 2006.


David K. Paylor, Director
Department of Environmental Quality

Tyson voluntarily agrees to the issuance of this Order.

By: 
Gordon P. Miller, Jr.
Date: 1/27/06

State of North Carolina

City/County of Wilkes

The foregoing document was signed and acknowledged before me this 27th day of

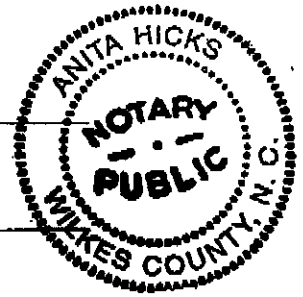
January, 2006, by Gordon P. Miller, Jr., who is
(name)

Vice President - Retail Fresh SE Division of Tyson, on behalf of the Corporation.
(title)

Anita Hicks

Notary Public

My commission expires: 12-1-2006



APPENDIX A

Tyson shall:

1. On or before February 1, 2006, submit to the Department a report detailing the new equipment and backup systems purchased since the upset to the dissolved air floatation system.
2. On or before March 30, 2006, complete the overhaul of the dissolved air floatation system.
3. On or before March 30, 2006, submit an application for a minor permit modification increasing the sampling frequency from 1/week to 3/ week for BOD5, TSS, total phosphorus, and ammonia-nitrogen.
4. Operate the Facility in a manner that ensures that it produces the best quality effluent of which it is capable during the implementation of the items above.

Pursuant to this Order communications regarding this Order, and its requirements shall be addressed as follows:

Frank Lupini
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060

Tyson shall confirm, in writing, completion of the Order requirements to the above address **within five (5) days of completion**.